

AMOUNT \$ 250

SUMMONS ISSUED Y-E

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK

DATE 7/25/05

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

FRED ROHRBACKER,)
Plaintiff)
) Civil Action
V.)
) No.
BOSTON HARBOR CRUISES, INC.,)
PROVINCETOWN PUBLIC PIER)
CORPORATION, and)
PROVINCETOWN-MACMILLAN)
REALTY TRUST,)
Defendants)

05 - 11562 RGS

MAGISTRATE JUDGE Alexander

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Now comes the Plaintiff in the above-entitled matter, and says:

The parties

1. The Plaintiff, Fred Rohrbacker, is a resident of Metairie, Louisiana.
2. The Defendant, Boston Harbor Cruises, Inc., is a corporation organized under the Laws of the Commonwealth of Massachusetts.
3. The Defendant, Provincetown Public Pier Corporation, is a public corporation organized under Chapter 13 of the Acts of 2000, as amended by Chapter 260 of the Acts of 2002.
4. The Defendant, Provincetown-MacMillan Realty Trust, is a trust created pursuant to a Declaration of Trust filed in Book 12986, Page 339, in the Barnstable County, Massachusetts, Registry of Deeds.

The injury

5. On September 13, 2003, the Plaintiff was a passenger on the 6:30 PM Boston to Provincetown Boston Harbor Cruises Fast Ferry, the M/V SALACIA.

6. Upon disembarking from said ferry at MacMillan Pier in Provincetown on September 13, 2003, the Plaintiff fell on MacMillan Pier between the 2 red supporting columns nearest to the gangway to the Boston Harbor Cruises Fast Ferry.

7. On September 13, 2003, the Plaintiff sustained personal injuries as a result of said fall.

8. Prior to and at the time he sustained the above mentioned personal injuries, the Plaintiff was exercising due care.

MacMillan Pier – ownership, operation, and control

9. On September 13, 2003, the Defendant, Boston Harbor Cruises, Inc., owned the area of MacMillan Pier referred to in paragraph 6 above.

10. On September 13, 2003, the Defendant, Boston Harbor Cruises, Inc., operated the area of MacMillan Pier referred to in paragraph 6 above.

11. On September 13, 2003, the Defendant, Boston Harbor Cruises, Inc., controlled the area of MacMillan Pier referred to in paragraph 6 above.

12. On September 13, 2003, the Defendant, Provincetown Public Pier Corporation, owned the area of MacMillan Pier referred to in paragraph 6 above.

13. On September 13, 2003, the Defendant, Provincetown Public Pier Corporation, operated the area of MacMillan Pier referred to in paragraph 6 above.

14. On September 13, 2003, the Defendant, Provincetown Public Pier Corporation, controlled the area of MacMillan Pier referred to in paragraph 6 above.

15. On September 13, 2003, the Defendant, Provincetown-MacMillan Realty Trust, owned the area of MacMillan Pier referred to in paragraph 6 above.

16. On September 13, 2003, the Defendant, Provincetown-MacMillan Realty Trust, operated the area of MacMillan Pier referred to in paragraph 6 above.

17. On September 13, 2003, the Defendant, Provincetown-MacMillan Realty Trust, controlled the area of MacMillan Pier referred to in paragraph 6 above.

Jurisdiction

18. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332, in that the parties are citizens of different states and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

COUNT I

Fred Rohrbacker v. Boston Harbor Cruises, Inc.

(Negligence)

19. The Plaintiff repeats and realleges paragraphs 1 - 18 above as it fully set forth herein.

20. On September 13, 2003, the Defendant Boston Harbor Cruises, Inc., its agents, servants and/or employees had a duty to keep said premises in a safe condition for all persons who came upon the premises.

21. On September 13, 2003, the Defendant Boston Harbor Cruises, Inc., breached the aforementioned duty by negligently and carelessly allowing the premises to exist in an unsafe and dangerous condition.

22. The personal injuries sustained by the Plaintiff were not caused by any fault on his part but were caused by the negligence of the Defendant Boston Harbor Cruises, Inc., its agents, servants and/or employees.

23. As a result of said injuries, the Plaintiff has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

WHEREFORE, the Plaintiff, Fred Rohrbacker, demands judgment against the Defendant Boston Harbor Cruises, Inc., in the amount of \$1,000,000.00, together with interest and costs.

COUNT II

Fred Rohrbacker v. Provincetown Public Pier Corporation

(Negligence)

24. The Plaintiff repeats and realleges paragraphs 1 - 18 above as it fully set forth herein.

25. On September 13, 2003, the Defendant Provincetown Public Pier Corporation., its agents, servants and/or employees had a duty to keep said premises in a safe condition for all persons who came upon the premises.

26. On September 13, 2003, the Defendant Provincetown Public Pier Corporation, breached the aforementioned duty by negligently and carelessly allowing the premises to exist in an unsafe and dangerous condition.

27. The personal injuries sustained by the Plaintiff were not caused by any fault on his part but were caused by the negligence of the Defendant Provincetown Public Pier Corporation, its agents, servants and/or employees.

28. As a result of said injuries, the Plaintiff has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

WHEREFORE, the Plaintiff, Fred Rohrbacker, demands judgment against the Defendant Provincetown Public Pier Corporation, in the amount of \$1,000,000.00, together with interest and costs.

COUNT III

Fred Rohrbacker v. Provincetown-MacMillan Realty Trust

(Negligence)

29. The Plaintiff repeats and realleges paragraphs 1 - 18 above as it fully set forth herein.
30. On September 13, 2003, the Defendant Provincetown-MacMillan Realty Trust., its agents, servants and/or employees had a duty to keep said premises in a safe condition for all persons who came upon the premises.
31. On September 13, 2003, the Defendant Provincetown-MacMillan Realty Trust, breached the aforementioned duty by negligently and carelessly allowing the premises to exist in an unsafe and dangerous condition.
32. The personal injuries sustained by the Plaintiff were not caused by any fault on his part but were caused by the negligence of the Defendant Provincetown-MacMillan Realty Trust, its agents, servants and/or employees.
33. As a result of said injuries, the Plaintiff has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

WHEREFORE, the Plaintiff, Fred Rohrbacker, demands judgment against the Defendant Provincetown-MacMillan Realty Trust, in the amount of \$1,000,000.00, together with interest

and costs.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES RAISED
IN THIS COMPLAINT.

Respectfully submitted for the
the Plaintiff, Fred Rohrbacker,
by his attorney,



David J. Berg, Esq.
Latti & Anderson LLP
30-31 Union Wharf
Boston, MA 02109
617-523-1000

Dated:

7/22/05

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Fred Rohrbacker

(b) County of Residence of First Listed Plaintiff Jefferson County
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Latti and Anderson, LLP, 30-31 Union Wharf,
 Boston, MA 02109, 617-523-1000

DEFENDANTS

Boston Harbor Cruises, Inc., Provincetown Public Pier Corporation,
 and Provincetown-MacMillian Realty Trust.

County of Residence of First Listed Defendant Suffolk County
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
 LAND INVOLVED.

Attorneys (If Known)

05-11562-JRG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | Citizen of This State | PTF | DEF | Citizen of Another State | PTF | DEF |
|---|-----|--------------------------|---|--------------------------|-------------------------------------|
| <input type="checkbox"/> | 1 | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 2 | <input type="checkbox"/> |
| Incorporated or Principal Place of Business In This State | | | Incorporated and Principal Place of Business In Another State | | |
| <input type="checkbox"/> | | | <input type="checkbox"/> | 5 | <input type="checkbox"/> |
| Foreign Nation | | | 6 | | |
| <input type="checkbox"/> | 3 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			SOCIAL SECURITY <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. §1332

VI. CAUSE OF ACTION

Brief description of cause:
 Personal injury case.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$
 1,000,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/22/05

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Fred Rohrbacker vs. Boston Harbor Cruises, Inc., Provincetown Public Pier Corporation, and Provincetown-MacMillan Realty Trust

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(e)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David J. Berg

ADDRESS 30-31 Union Wharf, Boston, MA 02109

TELEPHONE NO. 617-523-1000